

Attachment 7  
(8 pages)



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

August 29, 2008

Mr. E. Patrick McIntyre, Jr.  
Deputy State Historic Preservation Officer  
Tennessee Historical Commission  
2941 Lebanon Pike  
Nashville, Tennessee 37243-0442

Dear Mr. McIntyre:

TVA, DEFOOR CONDO DEVELOPMENT, 26A PERMIT, FINAL MEMORANDUM OF AGREEMENT (MOA), HAMILTON COUNTY, TENNESSEE

Please find enclosed five (5) copies of the final MOA with five (5) signatory pages regarding the proposed Defoor Condo development in Hamilton County, Tennessee. Once you have signed them, please return the documents to our office.

If you have any questions regarding this undertaking, please contact Erin Pritchard at 865.632.2463 or by email at [eepritchard@tva.gov](mailto:eepritchard@tva.gov).

Sincerely,

A handwritten signature in black ink, reading "Thomas O. Maher".

Thomas O. Maher, Ph.D.  
Manager  
Cultural Resources

EEP:IKS  
Enclosures

cc: Ms. Jennifer Barnett  
Tennessee Division of Archaeology  
1216 Foster Avenue, Cole Bldg. #3  
Nashville, Tennessee 37210

EDMS, WT 11D-K ✓

**MEMORANDUM OF AGREEMENT  
PURSUANT TO 36 CFR PART 800  
BETWEEN THE TENNESSEE VALLEY AUTHORITY  
AND THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER  
REGARDING ARCHAEOLOGICAL SITE 40HA524  
HAMILTON COUNTY, TENNESSEE**

WHEREAS, the Tennessee Valley Authority (TVA) proposes to issue a permit under Section 26a of the *TVA Act* to Ken Defoor (Applicant) for the placement of fill on private property along Tennessee River Mile 464.5R; and,

WHEREAS, identification and evaluation of archaeological resources and historic structures have been conducted within the development, as referenced in Appendix A; and TVA and the Tennessee State Historic Preservation Officer (TNSHPO) agree that archaeological site 40HA524 is eligible for listing in the National Register of Historic Places (NRHP); and,

WHEREAS, TVA has consulted with TNSHPO regarding this undertaking; and,

WHEREAS, TVA, in consultation with TNSHPO, has determined that the undertaking will adversely affect archaeological site 40HA524 (Appendix B); and,

WHEREAS, TVA, in consultation with TNSHPO, has determined that the undertaking will not affect historic structures listed on or eligible for listing in the NRHP; and,

WHEREAS, TVA has notified the Advisory Council on Historic Preservation (ACHP) regarding this undertaking pursuant to 36 CFR § 800.6(a)(1); and,

WHEREAS, the Applicant has been invited to be a signatory to this Memorandum of Agreement (MOA) and will be responsible for all costs necessary for implementation of this MOA; and,

WHEREAS, TVA has consulted with the Eastern Band of Cherokee Indians, Cherokee Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, The Chickasaw Nation, Muscogee (Creek) Nation of Oklahoma, Kialegee Tribal Town, Thlopthlocco Tribal Town, Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe of Texas, Shawnee Tribe, Absentee Shawnee Tribe of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Seminole Tribe of Florida, Choctaw Nation of Oklahoma, and Jena Band of Choctaw Indians (Appendix C); and,

WHEREAS, the United Keetoowah Band and the Eastern Band of Cherokee Indians have been invited to be a signatory to this MOA; and,

WHEREAS, there is no evidence to date that human remains, associated or unassociated funerary objects, sacred objects, or objects of cultural patrimony (collectively termed cultural items) are present at site 40HA524, or at any other location within the project's area of potential effects (APE); and,

WHEREAS, the possibility still exists that cultural items could be inadvertently discovered during mitigation and construction activities associated with this undertaking; and,

WHEREAS, a Treatment Plan has been developed in consultation with signatories and invited signatories and is made a part of this MOA as Appendix D, Treatment Plan.

NOW THEREFORE, TVA and TNSHPO agree that the undertaking shall be implemented in accordance with the following stipulations to satisfy TVA's responsibilities under Section 106 of the *National Historic Preservation Act (NHPA)*. The TVA Federal Preservation Officer, or the designee thereof, shall act for TVA in all matters concerning the administration of this MOA.

## **STIPULATIONS**

TVA shall ensure that the following stipulations are carried out before the commencement of any ground-disturbing activities that could affect historic properties.

### **1. TREATMENT PLAN**

The Treatment Plan, attached as Appendix D, has been developed in consultation with the signatories and invited signatories. This treatment plan consists of data recovery at site 40HA524. TVA and the Applicant will ensure that the provisions of this Treatment Plan are carried out.

### **2. REPORTS**

TVA shall ensure that all investigations carried out in implementation of the Treatment Plan and undertaken for compliance with this MOA are recorded in formal written reports that meet the Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23) and TNSHPO Standards and Guidelines for Architectural and Archaeological Resources Management Studies. The signatories, and invited signatories, shall be afforded thirty (30) days to review and comment on any reports submitted as compliance with this MOA.

### **3. TREATMENT OF HUMAN REMAINS AND FUNERARY OBJECTS**

The Applicant, in consultation with TVA, TNSHPO and Indian tribes that attach religious and cultural significance to NRHP-eligible properties (concerned Indian tribes), shall ensure that the treatment of any human remains and associated funerary objects discovered within the project's APE complies with all applicable state and federal laws. Should human remains be encountered during historic properties investigations or post-review discovery, all ground-disturbing activities, within 50 feet of the discovery, will be ceased immediately. The remains will be treated with respect to the deceased, and shall be protected from the time of discovery from further construction activities pending consultation to resolve treatment of such remains.

The Applicant shall immediately notify the Hamilton County Coroner, the State Archaeologist, TVA, and TNSHPO, should any human remains and/or associated funerary objects be encountered in connection with any activity covered by this MOA. TVA will notify the concerned Indian tribes within forty-eight (48) hours of being informed of the presence of these remains and/or funerary objects, and invite signatories and these Indian tribes to comment on any plans developed by the signatories and invited signatories to treat these remains and/or funerary objects. Whenever and wherever it is

feasible, human remains will be preserved-in-place. The Applicant, in consultation with TVA, TNSHPO, and concerned Indian tribes shall ensure that those remains and artifacts are treated in a manner that is consistent with ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (2007). Further, this treatment will be conducted in accordance with the applicable provisions of Tennessee Code Annotated (T.C.A.) 46-4-101 et seq. ("Termination of Use of Land as a Cemetery,"); T.C.A. 11-6-116, ("Excavation of Areas Containing Native American Indian Remains,"); T.C.A. 11-6-119 ("Reburial of Human Remains or Native American Burial Objects following Discovery or Confiscation"), and Tennessee Rules and Regulations Chapter 0400-9-1 ("Native American Indian Cemetery Removal and Reburial."), and the policies of the culturally affiliated Indian tribes regarding the treatment of human remains and funerary objects, if such human remains are of Native American origin and cultural affiliation can be determined (Appendix E).

#### **4. TIMETABLE FOR COMPLIANCE**

- a. TVA and the Applicant shall ensure that Stipulations 1-3 of this MOA are met before commencement of any construction-related activities within intact archaeological resources at 40HA524. If development is to be completed in a phased construction, the stipulations of this MOA may be satisfied independently for each phase.
- b. Throughout this MOA, unless otherwise stated, the signatories and the invited signatories shall have thirty (30) days to review and comment on all reports concerning investigations of historic properties. Comments received from the signatories, and invited signatories, shall be taken into consideration in preparing final plans. TVA will supply copies of the final reports and data recovery plans to the signatories and invited signatories.

#### **5. ADMINISTRATIVE CONDITIONS**

- a. If Stipulations 1 to 4 have not been implemented within ten (10) years from the date of this MOA's execution, this MOA shall be considered null and void, unless all the signatories have agreed in writing as provided in Paragraph 5.b. (below) to an extension for carrying out its terms. Upon the MOA becoming null and void, signatories, and the invited signatories, will resume consultation pursuant to 36 CFR Part 800.
- b. If the implementation of Stipulations 1 to 4 has not commenced within four (4) years from the date of this MOA's execution, signatories, and the invited signatories, shall review the MOA to determine whether the MOA should be extended. If the signatories, and invited signatories, agree that an extension is necessary, they will consult in accordance with 36 CFR § 800.6(c) to make appropriate revisions to the MOA.
- c. The signatories, or invited signatories, to this MOA may agree to amend the terms of the MOA. Such amendment shall be effective upon the signatures of all signatories to this MOA, and the amendment shall be appended to the MOA as an attachment.

- d. Should any signatory, or invited signatory, object within thirty (30) days after receipt of any plans, specifications, contracts, or other documents provided for review pursuant to this MOA, TVA shall consult with the objecting party to resolve the objection.
- e. If any signatory to this MOA determines that the terms of the MOA cannot be or are not being carried out, the signatories shall consult to seek an amendment to the MOA. If the MOA is not amended, then any signatory may terminate the MOA. If the MOA is so terminated, TVA shall ensure that historic properties, within APE for the undertaking, are protected in accordance with Section 106 of *NHPA* until such time that TVA may enter into a new MOA with the signatories or request the comments of ACHP pursuant to 36 CFR § 800.7(a).

Execution of this MOA by TVA and TNSHPO, and implementation of its terms evidence that TVA has taken into account the effects of the undertaking on historic properties, and that TVA has complied with its obligations under Section 106 of the *NHPA*.

## **SIGNATORIES**

### **TENNESSEE VALLEY AUTHORITY**

By: Anda A. Ray Date: 08-31-08  
Anda A. Ray, Senior Vice President, Office of Environment and Research and Federal Preservation Officer

### **THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER**

By: E. Patrick McIntyre, Jr. Date: 9-3-08  
E. Patrick McIntyre, Jr., Tennessee State Historic Preservation Officer



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

September 11, 2008

Mr. Ken Defoor, President  
Defoor Brothers Development  
6074 Shallowford Road  
Chattanooga, Tennessee 37421

Dear Mr. Defoor:

TVA, DEFOOR CONDO DEVELOPMENT, 26A PERMIT, FINAL MEMORANDUM OF AGREEMENT (MOA), HAMILTON COUNTY, TENNESSEE

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Sincerely,

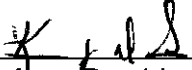
A handwritten signature in black ink that reads "Thomas O. Maher".

Thomas O. Maher, Ph.D.  
Manager  
Cultural Resources

EEP:IKS  
Enclosures  
cc: Files, CR, WT 11D-K

**INVITED SIGNATORIES**

**DEFOOR BROTHERS DEVELOPMENT**

By:   
Ken Defoor, President

Date: 9-23-08

**UNITED KEETOOWAH BAND**

By: \_\_\_\_\_  
George G. Wickliffe, Chief

Date: \_\_\_\_\_

**EASTERN BAND OF CHEROKEE INDIANS**

By: \_\_\_\_\_  
Mitchell Hicks, Principle Chief

Date: \_\_\_\_\_